

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Requests for Waiver of Decisions of the Universal Service Administrator by	)	
	)	
ComScape Telecommunications of Raleigh- Durham, Inc. and Millennium Telecom, LLC	)	

**ORDER**

**Adopted: June 11, 2010**

**Released: June 11, 2010**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we deny requests filed by ComScape Telecommunications of Raleigh-Durham, Inc. (ComScape) and Millennium Telecom, LLC (Millennium) to waive the filing deadline associated with the late filing of their FCC Forms 499-Q and allow them to late-file corrected forms.<sup>1</sup> Specifically, ComScape and Millennium request that the Commission waive certain deadlines associated with the late filing of their May 2009 and February 2009 FCC Forms 499-Q, respectively.<sup>2</sup> Millennium also requests a refund or reversal of late fees, penalties, and interest charges that resulted from the late filing of its FCC Form 499-Q.<sup>3</sup> We find that petitioners have not demonstrated good cause for waiver of the filing deadline and that Millennium has not demonstrated good cause for refund or reversal of fees resulting from the late filing of its FCC Form 499-Q. Accordingly, we direct the Universal Service Administrative Company (USAC) to continue its collection efforts for payments and late fees, penalties, and interest charges related to the petitioners' respective FCC Forms 499-Q.

**II. BACKGROUND**

2. USAC performs billing and collection functions for the Commission as part of its administration of the universal service fund support mechanisms.<sup>4</sup> The Commission requires carriers and certain other providers of telecommunications to file the FCC Form 499-Q each quarter projecting their interstate and international revenue for the upcoming quarter and providing their interstate and

<sup>1</sup> Letter from Ghanshyam C. Patel, ComScape Telecommunications of Raleigh-Durham, Inc., to Secretary, FCC, WC Docket No.06-122 (filed Aug. 11, 2009) (ComScape Letter); Letter from Dan Mack, Millennium Telecom, LLC, to Secretary, FCC, WC Docket No. 06-122 (filed Nov. 18, 2009) (Millennium Letter).

<sup>2</sup> See ComScape Letter at 1; Millennium Letter at 1.

<sup>3</sup> Millennium Letter at 1.

<sup>4</sup> See 47 C.F.R. § 54.702(b).

international revenues from the previous quarter.<sup>5</sup> USAC computes the entities' quarterly universal service contribution obligation based on the projected revenue information provided on the FCC Form 499-Q and USAC bills entities each month based on this obligation.<sup>6</sup> Filers have the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.<sup>7</sup> In April of each year, contributors file the FCC Form 499-A to report their actual revenues from the previous year.<sup>8</sup> USAC uses the FCC Form 499-A data to conduct a true-up process whereby USAC determines the actual amount owed by each contributor from the previous year and issues either an invoice for underpayment or a credit for the overpayment.<sup>9</sup>

3. The petitioners timely submitted their respective FCC Forms 499-Q, but overstated the amount of revenues that were subject to universal service contributions.<sup>10</sup> Consistent with its usual practice, USAC sent a courtesy e-mail prior to the expiration of the 45-day revision window notifying the contact person listed on the petitioner's Form 499 of the substantial increase in their respective contribution bases in light of the FCC Form 499-Q filings.<sup>11</sup> The petitioners subsequently attempted to file revised FCC Forms 499-Q, but the revisions were submitted after the 45-day window to file revised forms.<sup>12</sup> Accordingly, USAC determined petitioners' contribution obligations based on the reported quarterly information and invoiced them based on this determination.<sup>13</sup> The petitioners then filed with the Commission the pending requests to waive the 45-day revision window.<sup>14</sup>

### III. DISCUSSION

5. We find that the petitioners have not demonstrated good cause to waive the filing deadline for FCC Form 499-Q revisions and deny the petitioners' requests for waiver.<sup>15</sup> ComScape

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<sup>5</sup> See 47 C.F.R. § 54.706 (a)-(b); see also FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (February 2010) (last visited May 10, 2010).

<sup>6</sup> 47 C.F.R. § 54.711(a).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002) (*Second Wireless Safe Harbor Order*).

<sup>8</sup> *Id.* at 24973, para. 37.

<sup>9</sup> *Id.* at 24972, para. 36. USAC will refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual FCC Form 499-A, then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its FCC Form 499-A, then USAC will collect the difference from the contributor using an average of the two highest contribution factors from that year. See *id.*

<sup>10</sup> See ComScape Letter at 1; Millennium Letter at 1.

<sup>11</sup> See, e.g., Millennium Letter at 3.

<sup>12</sup> See ComScape Letter at 1; Millennium Letter at 2.

<sup>13</sup> See *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 36.

<sup>14</sup> ComScape Letter at 1; Millennium Letter at 4. See 47 C.F.R. § 54.722(a).

<sup>15</sup> The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir.

claims that it filed its waiver request in accordance with USAC staff's recommendation, but provides no other justification for its request.<sup>16</sup> Millennium asserts that a waiver is warranted because the vendor that prepares its regulatory filings failed to notify Millennium of the USAC notice alerting it that the filing would increase substantially Millennium's contribution base and failed to correct the reporting error within the 45-day revision window.<sup>17</sup>

6. We are not persuaded by Millennium's argument that actions by a third party vendor warrant a waiver of the filing deadline. USAC routinely sends a courtesy e-mail to the regulatory contact person listed on the FCC Form 499-A notifying that person of the change in the contribution base revenues as compared to the prior quarter.<sup>18</sup> Millennium acknowledges that USAC sent the courtesy e-mail to the regulatory contact identified in Millennium's FCC Form 499-A, but states that the company that prepared its regulatory filings ignored USAC's e-mail.<sup>19</sup> USAC's courtesy e-mail is just that, a courtesy notification to contributors. It is the contributor's responsibility to identify and correct any errors in its filing within the 45-day revision window. Accordingly, we conclude that the proper relief for the petitioners under the circumstances is to seek reconciliation of their respective contribution obligations through the annual true-up process.<sup>20</sup> Once USAC has completed the reconciliation calculation process, adjustments, as necessary, will be made to the petitioners' respective accounts and will appear on their July, August and September 2010 invoices. Moreover, the fact that USAC staff advised ComScape to seek relief from the Commission, without more, is not a sufficient basis for waiver.

7. We also deny Millennium's request for a refund or reversal of late fees, penalties, and interest assessed on its account. Millennium made a payment of \$10,000, which it believed would cover its contribution obligation had it reported the correct revenues.<sup>21</sup> We find that Millennium has not demonstrated that good cause exists for refund or reversal of these fees. Millennium could have avoided incurring late fees, penalties, and interest by complying with the "pay and dispute" procedure.<sup>22</sup> Rather than paying its invoice in full, Millennium chose to pay only what it thought it would owe had it reported its revenue correctly.<sup>23</sup> Absent enforcement of the pay and dispute procedure, other contributors may choose to engage in similar nonpayment or underpayment of invoices with which they disagree, thereby harming the predictability of the fund. We, therefore, deny Millennium's request for refund or reversal of these fees.

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2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently "unique situation" to grant waiver).

<sup>16</sup> See ComScape Letter at 1.

<sup>17</sup> See Millennium Letter at 2-3.

<sup>18</sup> USAC notifies contributors via e-mail when the estimated revenues will result in a change in status. See Millennium Letter at 2-3.

<sup>19</sup> See Millennium Letter at 2-3.

<sup>20</sup> See *supra* note 9.

<sup>21</sup> See Millennium Letter at 4.

<sup>22</sup> The "pay and dispute" procedure requires contributors to pay disputed invoices. USAC imposes late payment fees on invoices that are not paid in full, and these fees will not be waived unless the disputed charges are later found to be a result of an error by USAC. See USAC Website, Fund Administration, Contributors, File and Appeal, <http://www.usac.org/fund-administration/contributors/file-appeal/> (last visited May 10, 2010); see also *Federal State Joint Board on Universal Service: Aventure Communications Technology, LLC, Form 499 Filer ID; 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, CC Docket No. 96-45, WC Docket No. 06-122, Order, 23 FCC Rcd 10096-10099 (Wireline Comp. Bur. 2008).

<sup>23</sup> See Millennium Letter at 4.

8. We take this opportunity to remind all filers of the importance of timely filing their FCC Forms 499-Q.<sup>24</sup> We remind filers that filings can be made electronically through USAC's website and that FCC Forms 499-Q may be submitted in advance of the filing deadline.<sup>25</sup> We caution filers that the submission of the form is considered timely based upon USAC's receipt of the form and not the postmark date.<sup>26</sup> Finally, we stress the need for USAC to impose late fees when these important filing deadlines are not met, as a means to ensure that FCC Forms 499-Q are timely filed.<sup>27</sup>

#### IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority delegated in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the requests for waiver of the FCC Form 499-Q revision deadline by ComScope Telecommunications of Raleigh-Durham, Inc. and Millennium Telecom, LLC ARE DENIED.

10. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the request for refund or reversal of late fees, penalties, and interest by Millennium Telecom, LLC IS DENIED.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

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<sup>24</sup> See Universal Service Administrative Company, Schedule of Filings, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (last visited May 10, 2010) (USAC Form 499 Filing Schedule).

<sup>25</sup> See <http://www.usac.org/fund-administration/forms/> (last visited May 10, 2010).

<sup>26</sup> *Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 20 FCC Rcd 4224, 4225-26, paras. 3, 5 (Wireline Comp. Bur. 2005).

<sup>27</sup> See 47 C.F.R. § 54.713.